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16.08.2021
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CO No.3659 of 2019
IA No: CAN 1 of 2020

The Divisional Manager, Life Insurance
Corporation of India

Vs.

Adi Puja Committee, Lal Bungalow
(Malancha Road) and another

Mr. Avishek Guha

.... for the petitioner

Despite service, none appears on behalf of the
plaintiff/opposite party no.1.

It is evident from the affidavit-of-service filed on
the previous occasion that good service was effected
on the opposite party no. 1. As such, the matter is
taken up for hearing on merits *ex parte* in the absence
of the opposite party no.1, who is the primary
contesting opposite party.

The short point involved in the revisional
application is, whether the trial court acted without
jurisdiction in rejecting the petitioner's application
under Order VII Rule 11 of the Code of Civil Procedure

for rejection of the plaint on the ground of bar of law, under Section 15 of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 (for the sake of brevity, “the PP Act”).

Learned counsel places particular reliance on paragraph nos.7 and 8 of the plaint to indicate that the plaintiff/opposite party no.1 clearly indicated in the said paragraphs that an eviction proceeding has been initiated against the plaintiff upon due service of notice, in which proceeding the plaintiff has also entered appearance by filing a written objection.

The cause of action, as indicated in paragraph no.8 of the plaint, read with the reliefs (a) and (b), which are the principal reliefs sought in the plaint, indicate that the suit was filed primarily for a restraint order on the present petitioner, that is, defendant no.1 in the suit, from exercising its rights in consonance with Section 5 as well as other sections of the PP Act. Although the plaint is couched in the manner of a declaratory suit, the primary relief sought is permanent injunction, which would frustrate the specific operation of Section 15(a) of the PP Act which clearly provides that no court shall have jurisdiction to entertain any suit or proceeding in respect of the eviction of any person who is in unauthorised occupation of any public premises.

Learned counsel for the petitioner contends that the eviction proceeding, referred to in the plaint, culminated in an order of eviction being passed against the plaintiff, against which an appeal is pending at the instance of the plaintiff.

It is submitted that, despite having full knowledge thereof, the plaintiff is carrying on with the suit, merely for the purpose of frustrating the valid order of eviction passed by the Estate Officer, which is the competent forum under the PP Act.

Upon considering the materials on record and the specific averments made in the plaint, it is noticed that the plaintiff categorically admitted having knowledge of the eviction proceeding instituted against the plaintiff.

Learned counsel for the defendant no.1/petitioner is correct in pointing out that this court can look into the eviction order passed therein, in view of the proceeding itself and knowledge thereof having been admitted within the four corners of the plaint.

That apart, the suppression of the subsequent result of the proceeding by the plaintiff cannot be a sufficient factor for compelling the petitioner to carry on with unnecessary litigation before the civil court. In view of the plaintiff having exercised its right to prefer

a statutory appeal under Section 9 of the PP Act, it was for the plaintiff to disclose such fact before the civil court. Reference to the proceeding in the plaint is sufficient reason to give a window to this court to take judicial notice of the order of eviction passed therein and the pendency of an appeal at the behest of the plaintiff.

Such suppression is on a *mala fide* footing, which creates sufficient basis for the conclusion that the suit is vexatious and filed *mala fide*, and deserves to be nipped in the bud.

It is evident that a competent Estate Officer, in exercise of jurisdiction as conferred under the PP Act, has passed a valid order of eviction, which is binding on the parties till set aside, if at all, in appeal. Suppression of such fact by the plaintiff is sufficient ground as well to reject the plaint.

That apart, although the order of eviction was a subsequent development to the filing of the suit, in view of the information slip indicating the said order having been brought to the notice of the court as an annexure to the instant application under Article 227 of the Constitution of India, which remains uncontroverted in view of the absence of the plaintiff/opposite party no.1, it is clear that the Estate Officer came to a *prima facie* finding that the

petitioner is in unauthorised occupation of the suit premises, which invalidates the basis of the right claimed by the petitioner in the property.

The first relief sought in the plaint pertains to a declaration regarding alleged right, title, interest and possession of the plaintiff over the 'A' schedule property, which itself is in jeopardy in view of the order of eviction passed by a competent forum.

That apart, the essential consequential relief of injunction, which is mandated under the scheme of Section 34 of the Specific Relief Act, 1963, falls squarely within the purview of the Estate Officer's jurisdiction, thereby attracting the rigour of Section 15(a) of the PP Act.

Hence, the suit is not maintainable before a civil court on such score as well.

In such view of the matter, the impugned order is vitiated by a gross jurisdictional error.

Accordingly, CO No.3659 of 2019 is allowed, thereby setting aside the Order No.09 dated June 27, 2019 passed by the Civil Judge (Junior Division), Third Court at Paschim Medinipur in Title Suit No.522 of 2018 and rejecting the plaint of the said suit.

IA No: CAN 1 of 2020 is disposed of accordingly.

There will be no order as to costs.

Urgent photostat certified copies of this order, if applied for, be made available to the parties upon compliance with the requisite formalities.

(Sabyasachi Bhattacharyya, J.)